L. R. 2 Q. B. 534. It is submitted that this position is untenable since the servant has the duty of protecting the interest of the company, and his decision as to what means should be used in any given case should bind the company. To say that in no case where the principal would not have had the right to do the act, can he be held, is to say that he is never liable for the unauthorized tort of his agent. It cannot be said that the principal would have the right to violate the revenue laws, *Stockwell* v. *U. S.* (1871) 13 Wall. 531; *Rex* v. *Strannyforth* (1721) Bunb. 97; or to commit forgery, *Boardman* v. *Gore* (1819) 15 Mass. 331; or to publish a criminal libel, *Rex* v. *Walter* (1799) 3 Espin. 21; or to obstruct omnibuses, *Limpus* v. *London Gen. Omnibus Co.* (1862) 1 H. & C. 526; or negligently to drive a coach so as to injure some one, *Moreton* v. *Hardern* (1825) 4 B. & C. 223; or to kick a boy stealing a ride from a swiftly moving train, *Rounds* v. *D. L. & W. R. Co.* (1876) 64 N. Y. 129, yet in all these cases the innocent partner would be held, *Moreton* v. *Hardern*, supra.

The principal case seems unsound, the true rule being that where an agent, and therefore a partner, is under a duty to act in the protection of the interests of the principal or firm, his acts done in the performance of that duty, for the benefit of the principal or firm, shall render the latter liable. *Staples* v. *Schmid* (1893) 18 R. I. 224.

Limitations on Inter-State Carriers as Dealers.—The Supreme Court has recently handed down a decision on the rebate clause of the Inter-State Commerce Act, destined to have a far reaching effect on railroads dealing in commodities. The Chesapeake and Ohio Railroad had contracted to supply a quantity of coal to the New Haven road at a price which would leave only $.28 a ton for freight on its own road, the published tariff being $1.45. The court held that a railroad could not discriminate in its own favor in respect to goods in which it dealt, and an injunction issued. *N. Y. N. H. & H. R. R.* v. *Inter-State Commerce Commission*, U. S. Supreme Court, Feb. 19, 1906.

The prohibition of the Acts is against rebates, both directly or indirectly "whereby any such property shall by any devise whatever be transported at a less rate than that named in the tariffs." 32 U. S. St. 379, 847. This language is certainly broad enough to cover discrimination by the carrier in its own favor, and the difficulty lies rather in the application. The railroads may be in any one of three positions in respect to any given commodity such as coal:—(1) simple carrier, (2) carrier and producer, and (3) carrier and dealer. The rebate clause has always been applied in the first case, to prevent a carrier from discriminating between shippers. It has not, however, been applied in the second case, where the carrier is also a miner and a producer of the coal in question. The reason assigned is, not because such carrier is outside the prohibition of the Act, but because of the supposed practical impossibility of determining the existence of the discrimination, there being no sepa-

ration in the books of the company of the profits from the two sources. *Haddock* v. *D. L. & W. R. R.* (1890) 4 I. C. C. Rep. 296; *Coxe Bros. & Co.* v. *Lehigh Valley R. R.* (1891) 4 I. C. C. Rep. 535. In the principal case the applicability of the clause to carriers of the third class, those simply dealing in coal, was in issue. The court stated the question as follows, "Has a carrier engaged in inter-State commerce the power to contract to sell, and transport, in completion of the contract, the commodity sold, when the price stipulated in the contract does not pay the cost of purchase, the cost of delivery, and the published freight rates?" The court answered the question in the negative, holding the prohibition "applicable to every method of dealing by a carrier by which the forbidden result could be brought about."

The decision of the court commends itself strongly as a proper interpretation of the clause both from the plain construction of the language and the general remedial purpose of the act. *Grain Rates of C. & G. W. R. R.* (1897) 7 I. C. C. Rep. 33. The exemption of the carrier from the rule when carrying his own goods would provide a means for building up a monopoly far more effective than the total abrogation of the act itself would afford. The practical result of the decision of the principal case is that the carrier is not permitted to say that the loss falls on him as a dealer and not as a carrier, and while such ruling puts the carrier in a worse position than the independent dealer who may sell at any price, this being the result of proper regulation, is perfectly constitutional and, what is more, highly desirable from the economic point of view. *Atty. Gen.* v. *Great Northern Ry.* (1860) 29 Law J. (N. S. Eq.) 794.

ADMINISTRATION UPON THE ESTATES OF ABSENTEES.—The history of the law as to administration of the estates of persons absent and unheard of is bound up with theories of the presumption of death. Although the early common law recognized no definite period of absence as raising such a presumption, Swinb. Pt. 6, s. 13, later decisions and statutes, following the analogy of the Statute of Bigamy, 1 Jac. 1, c. 2, and Stat. 19 Car. II, c. 6, relating to leases on lives, as recognized in *Doe* v. *Jesson*, (1805) 6 East 80, have developed the doctrine that continued and unaccounted absence for seven years will be sufficient. Wig. Evid. §2531, *n.* 3. On this basis courts have granted administration upon the property of absentees by virtue of their probate jurisdiction. W'ms. Exec., 7 Am. ed., Vol. I, p. 673, *n.* But since the death of the person is a jurisdictional fact, its disproof by the appearance of the deceased, or other evidence should avoid the entire proceedings. A much noted case is said to stand out against this result. *Roderigas* v. *Savings Institution* (1875) 63 N. Y. 460. It was there held that if the surrogate had found the absentee's death as a fact and had granted administration thereon, his jurisdiction was not open to collateral attack, and the administration was valid until set aside. But the general rule is that probate jurisdiction, being special and limited, may in